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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,561	04/21/2004	Rodolfo Fernandez JR.		6167

7590 11/26/2004
RODOLFO FERNANDEZ JR.
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EXAMINER

CEGIELNIK, URSZULA M

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/828,561	Applicant(s) FERNANDEZ, RODOLFO	
	Examiner Urszula M Cegielnik	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-28 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Regarding claims 1, 4, 9, 17, 21, and 22, the phrase "such as, but not limited to" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 9 and 10 recite limitations using alternative language (i.e. "or" and "and/or"). It is not clear whether Applicant is intending to claim all of the structures or just some of them. For example, in claim 9, is Applicant intending to claim rotation around a pivot and a linear motion, or oscillation around a pivot or linear motion.

Claim 24 recites "a watertight unit employing proper designs and suitable sealing elements". It is not clear what would be considered a watertight unit employing designs that are proper and sealing elements which are considered suitable.

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The above are intended as examples only. Applicant is requested to thoroughly review the claims and make any necessary corrections thereto wherever appropriate but not specifically pointed out.

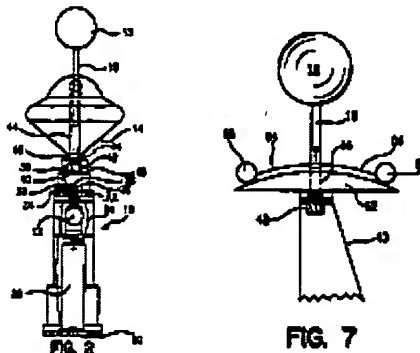
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-14, 18, 24, 25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Coleman et al. (US Patent No. 6,645,030).



Coleman et al. (US Patent No. 6,645,030) disclose a combined portable fan-candy holder toy (col. 2, lines 57-65) comprising a portable fan including at least one air impeller (64) driven by a battery (22) powered electric motor (24) within a body (10) and a candy holding device (44); the air impelling element (64) is driven by elastic elements (*spring 74*); the holding device (44) is provided with a locking mechanism to secure the stick (18) of the lollipop (16); the device is

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reusable (col. 1, lines 26-29; col. 2, lines 6-8), provided with replaceable batteries (22), a removable cover (20), and a switch (12); the toy is provided with a fixed or detachable base (lower housing 10); the device is constructed as a watertight unit (*the device is inherently constructed to a degree as a watertight unit, since the unit carries batteries and any contact with water would cause corrosion*) and movable decorative parts (col. 1, lines 33-40; col. 2, lines 47-56).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Liaw.

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for the holding device having a hollow socket and rotating elements unbalanced to produce a vibrating effect.

Liaw discloses a candy holder having a hollow socket (96) for retaining a stick (14) of a lollipop (16), and rotating elements (76) that are unbalanced by an eccentric portion (100) of a spur gear shaft (86).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a hollow socket in the holding device as

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taught by Liaw, since such a modification would positively secured the lollipop to the holding device.

Furthermore, it would have been obvious to one having ordinary skill in the art to provide rotating elements that are unbalanced to produce a vibrating effect, since such a modification would provide added amusement to a child.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Crosbie.

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for a reservoir containing liquid.

Crosbie teaches a candy holder having a reservoir (18) for liquid (col. 2, lines 49-55).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a reservoir for liquid as taught by Crosbie, since such a modification would provide added amusement to a child.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Maida.

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for a compartment for storage or dispensing.

Maida teaches placing a compartment (30,35) in a candy holder (10) for storing items such as partly used lollipops and garbage (col. 3, lines 18-20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a compartment in a candy holder as

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taught by Maida, since such a modification would allow more portability of the candy holder.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Coleman et al (US Patent Application Publication No. 20030138527).

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for flexible elements waving under the action of airflow.

Coleman et al (US Patent Application Publication No. 20030138527) discloses a candy holder having flexible elements (16) made out of pliable material (*e.g. rubber or wire*).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide flexible elements as taught by Coleman et al (US Patent Application Publication No. 20030138527), since such a modification would provide more realistic animation of the candy holder.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Coleman et al. (US Patent No. 5,733,033).

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for sound and light emission devices mounted on the toy.

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Coleman et al. (US Patent No. 5,733,033) disclose a candy holding device having a sound making device (30) and light device (light bulb 33) having a power supply 38.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Coleman et al. (US Patent No. 5,733,033).

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for the device built as a whole sealed unit with non-replaceable batteries.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to build the device as a whole sealed unit with non-replaceable batteries, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent No. 6,645,030) in view of Coleman et al. (US Patent No. 6,099,873).

Coleman et al. (US Patent No. 6,645,030) disclose the claimed invention except for the toy provided with a necklace.

Coleman et al. (US Patent No. 6,099,873) teaches providing a candy holder with a necklace (*e.g. the necklace being in the form of a string or rope*) (col. 1, lines 59-63; col. 2, lines 8-9). The reference further teaches a cover (cap 28) for candy (23) which is placed over the candy (23) when it is not being consumed (col. 2, lines 5-8).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a necklace for the candy holder as taught by Coleman et al. (US Patent No. 6,099,873), since such a modification would enhance the portability of the candy holder.

Furthermore, it would also have been obvious to one having ordinary skill in the art at the time the invention was made to provide a cover for the candy as taught by Coleman et al. (US Patent No. 6,099,873), since such a modification would protect the candy from contamination.

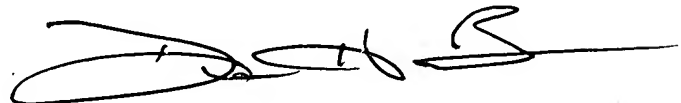
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM - 2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

The fax phone number for the organization where this application or proceeding is assigned is 571- for both regular and After Final communications.

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3714



DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
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